

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51

REPLY COMMENTS OF ADTRAN, INC.

ADTRAN, Inc. (“ADTRAN”) files these Reply Comments in response to some of the submissions on the Commission’s Further Notice of Proposed Rulemaking with regard to reform of the Universal Service Fund contribution methodology.¹ In its initial comments, ADTRAN urged the Commission to use a number of important principles to guide reform of the system. Any new contribution methodology must (1) be technology and competitively neutral; (2) not create disincentives for the deployment of new services and technologies; (3) be manageable; and (4) follow the dictates of Congressional authority. While the other comments reflect a consensus on the use of these principles, there was not any general agreement on a new or revised contribution methodology that would fulfill these goals.

It should come as no surprise that there is not a simple solution or a quick and easy fix. The Commission’s effort to rationalize a universal service subsidy mechanism in a competitive marketplace goes back decades, and in the meantime the telecommunications world has been

¹ *Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket No. 06-122, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, FCC 12-46, released April 30, 2012, 77 *Federal Register* 33896 (June 7, 2012) (hereafter cited as “*Further NPRM*”).

constantly evolving. It is with that background in mind that the Commission should evaluate the initial comments submitted in this proceeding.

The Commission Should Resist Most Efforts to Carve Out Exceptions

As ADTRAN explained in its initial comments in this proceeding, when the Commission first began to grapple with the contribution side of the (then non-transparent) universal service support mechanism – access charges – it “temporarily” exempted enhanced services (the predecessor to information services).² Some thirty years later, this “temporary” exemption remains firmly in place, notwithstanding the significant growth in these services (while at the same time the voice services on which the subsidy burden was placed continue to decline). The “temporary” exemption created a great deal of distortion in the marketplace between burdened and exempted services. ADTRAN thus cautions the Commission to be wary of pleas for exemption from the contribution obligations under whatever new or reformed mechanism is adopted in this proceeding.

Not surprisingly, several commenters seek such exemptions. The Wireless Internet Service Providers Association (“WISPA”) seeks an exemption for standalone Internet access providers, or at the very least, an exemption for any revenues derived from broadband service to customers located in areas where another service provider is eligible for CAF support.³ Several parties urge the Commission to create an exemption for SMS messaging services.⁴

² *MTS and WATS Market Structure*, 97 F.C.C.2d 682 (1983) at ¶ 83.

³ WISPA Comments at pp. 9-11. In addition, WISPA urges the Commission to limit any contribution to the telecommunications component, and to greatly increase the *de minimis* exemption to \$7 Million.

⁴ *E.g.*, Microsoft at pp. 11-13 (“over the top” messaging services should be exempt); RCA at pp. 7-9. *Cf.*, CTIA at pp. 22-26 (unfair to assess only SMS, and not “over the top competitors”). In contrast, several commenters specifically suggested that the Commission make

National Public Radio suggests that ancillary services provided by public broadcasters should be exempt from any universal service contribution requirement.⁵ Microsoft advocates an exemption for one-way VoIP services.⁶ DISH Network L.L.C., EchoStar Technologies L.L.C., and Hughes Network Systems, LLC (collectively, “EchoStar”) requests that the Commission exempt satellite broadband services from the contribution requirement.⁷ Clearwire proposes that the Commission create an exemption for “freemium” services.⁸ The American Public Communications Council (“APCC”) urges the Commission to exempt payphone service providers from any USF contribution obligation.⁹ And IBM requests that the Commission maintain a system integrator exemption.¹⁰

ADTRAN is concerned that creating numerous exemptions will increase the burden on the remaining services, thereby creating a greater risk of a distortive impact of the USF “tax.”¹¹ In contrast, an inclusive base could reduce the USF “tax” to as little as 2%.¹² Moreover, to the

clear that SMS messaging services should contribute to universal service support. *E.g.*, NTCA at pp. 9-13; MetroPCS at pp. 15-16; AARP at pp. 20-24.

⁵ NPR at pp. 2-7.

⁶ Microsoft at pp. 8-11. In contrast, other commenters urged the Commission to require contributions from “one-way” VoIP services. *E.g.*, NTCA at pp. 13-15; AARP at p. 24; US Cellular at p. 31.

⁷ Echostar at pp. 5-6.

⁸ Clearwire at pp. 6-9.

⁹ APCC at pp. 7-13.

¹⁰ IBM at p. 1.

¹¹ Other commenters share ADTRAN’s concern. *E.g.*, GVNW at p. 9.

¹² *Further NPRM* at ¶ 69.

extent that nearly everyone benefits from the universal availability of voice and broadband services, the base of contributors should be as broad as possible.

The Record Suggests the Commission Should be Very Wary of Imposing a Connections-based Support Mechanism

The *Further NPRM* offered several potential alternative contribution methodologies, including refinement and expansion of the current revenue-based approach, use of a connections-based approach, and use of a numbers-based approach. The comments filed in response to the *Further NPRM* fail to reflect any consensus on the best means of collecting the USF support. However, the record does buttress ADTRAN's concerns that a connections-based approach could be counterproductive to the goal of fostering universal broadband service.

Although some of the comments supported a connections-based approach,¹³ even the proponents of a connection-based methodology disagreed on whether the charge should vary based on speed.¹⁴ Moreover, a number of commenters opposed use of a connections-based support mechanism.¹⁵ These opponents explained that there would be significant drawbacks to

¹³ Supporters of a connections-based USF support methodology include Google (at pp. 5-9), Vonage (at p. 2); The Voice on the Net Coalition (at p. 2), Microsoft (at pp. 13-15), Sprint (at pp. 25-28) and the Information Technology Industry Council (at p. 4-6). The Ad Hoc Telecommunications Users Committee indicated that its first choice was a numbers-based methodology, but a properly designed connections-based approach would also be acceptable (at pp. 28-33). And the Independent Telephone and Telecommunications Alliance proposed a hybrid numbers/connection-based mechanism (at pp. 19-25).

¹⁴ Compare, e.g., Google, Comcast and NCTA (contending that only a single rate should be utilized), with Peerless and Cincinnati Bell (contending that tiered charges should be applied to ensure fairness). Other comments are more nuanced, e.g., the FTTH Council's "fall back" position is that if the Commission uses a connections-based system, there should be no tiering.

¹⁵ E.g., Verizon at pp. 47-48; US Cellular at p. 34; TracFone at pp. 3-6; Rural Telecommunications Group at pp. 9-10; RCA at pp. 9-12; Peerless at pp. 7-9; NASUCA at pp. 19-20; International Carrier Coalition at pp. 11-13; Fibertech, *et al* at pp. 14-15; Alliance of Automobile Manufacturers at pp. 3-5.

use of a connections-based system. Imposition of a connections-based charge would likely dampen consumer demand for broadband connections, which certainly runs counter to the Commission's goal of fostering greater broadband adoption. Moreover, these adverse effects on consumer demand would in turn decrease service providers' incentives to invest in newer broadband technologies with greater capabilities. Thus, such USF "taxes" would conflict with the Commission's goal of ubiquitous and robust broadband services in America.

In addition, even assuming *arguendo* that the Commission wanted to utilize a tiered connections-based approach, the record reflects the difficulty of designing such a methodology and establishing the tiers.¹⁶ The Commission has expended significant efforts so far in trying to establish a common methodology for measuring broadband speeds¹⁷ -- it is by no means a simple or uncontroversial task. And any attempt to measure speed gets significantly more complicated for mobile broadband services, where the speed actually experienced by the consumer will depend on a number of factors, including proximity to the wireless tower, weather conditions, number of other customers in the area, indoors vs. outdoors and the customer's equipment. In addition, under some data plans wireless carriers may throttle back a particular customer's speed after certain thresholds have been reached. Under all of these various conditions, it is not clear what "speed" would be assigned to any particular customer's wireless broadband connection.

In a similar vein, some broadband technologies provide for "burstable" speeds, and it is not clear whether it would be equitable to assess charges based on such "maximums" that are not

¹⁶ See, e.g., Clearwire at p. 6; Cincinnati Bell at pp. 17-19; CenturyLink at p. 18; Calif PUC at pp. 13-14; ACA at pp. 9-10; Alaska pp. 12-13; AARP at pp. 45-46; ATSI at pp. 9-10.

¹⁷ Since late 2009, the Commission has been working with industry, academia and other groups on a project to measure broadband performance in a consistent and meaningful manner. *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, Notice of Inquiry, 24 FCC Rcd 11380 (2009).

available on a regular basis, although presumably some account should be taken of the “burstable” speed. It is also far from clear whether the tiers would be set solely based on download speeds, or whether upload speeds would also be factored into the equation in setting the tiers. In addition, as the Commission has recognized, the quality of a broadband connection is also affected by latency and reliability, and it is not clear whether these factors would also be taken into account in setting a connections-based contribution formula.

As the record demonstrates, determining the number of tiers to be implemented and establishing the parameters of the various tiers is far from a simple task. At the same time, getting it wrong creates a risk of discouraging broadband adoption and deployment, and also could adversely affect the attractiveness of particular technologies – which conflicts with the goal of technology neutrality. In addition, the process is further complicated insofar as various entities have asked for exemptions and/or special treatment if the Commission decides to use a connections-based contribution methodology.¹⁸ Dealing with such issues would add an additional measure of politics and policy to the already difficult process.

Finally, ADTRAN observes that this process would need to be repeated on a regular basis, since presumably the setting of the tiers would need to be updated to take into account advances in technology and changes in usage patterns/demand.¹⁹ The diversion of Commission (and commenter) resources to such proceedings would likely be substantial, while the lack of stability and the increase in uncertainty could itself have an adverse effect on broadband investment. In sum, the comments make clear that a connections-based USF support

¹⁸ *E.g.*, Clearwire requested an exemption for “freemium” services (at pp. 6-9); the Alliance of Automobile Manufacturers seeks an exemption for telematics (at pp. 3-5).

¹⁹ *E.g.*, Cincinnati Bell at p. 18; Verizon at p. 48.

methodology is not a simple panacea to the Commission's need to reform the current contribution system.

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ADTRAN urges the Commission to adopt a rational, fair, technology-neutral and uncomplicated contribution methodology. The comments filed so far present somewhat of a jumble of proposals and requests for exemptions, rather than a consensus on any one of the alternatives suggested in the *Further NPRM*. The record does suggest, however, that there are significant drawbacks to a connections-based approach.

Respectfully submitted,

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